IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2007

CORAM:

THE HON'BLE MR.JUSTICE CHOCKALINGAM

W.P.NO.16211 OF 2007

AND

WP.MP.NOS.1 AND 2 OF 2007

K.Velankannan ...Petitioner

Vs.

1.The Government of Tamil Nadu rep.
by Secretary to Government,
Agriculture Department,
Fort St.George,
Chennai 600 009.

2. The Chief Engineer(Incharge)
Agricultural Engineering,
Nandanam,
Chennai 600 035.

3. The Executive Engineer,
(Agricultural Engineering)
Villupuram. ..Respondents

Petition filed under Article 226 of the Constutition of India praying for the issuance of awrit of Certioarified Mandamus as stated therein.

For Petitioner : Mr.M.Ravi
For Respondents : Mr.N.Senthil Kumar
Additional Government Pleader

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O R D E R

Invoking the writ jurisdiction of this Court, the petitioner has sought for the issuance of a writ of Certiorarified mandamus for cancellation of order of the second respondent in Pro.No. Pension.2/4993/2002 dated 21.3.2007 whereby the order of appointment of the petitioner on compassionate ground was cancelled and consequently seeking a direction to allow he petitioner to continue in service as Junior Assistant with all consequential benefits.

2. The Court heard the learned counsel on either side.

3. Affidavit filed in support of the writ petition is perused and also counter affidavit.

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4. From the submissions made by the learned counsel for the petitioner, it could be seen that the petitioner is a son of one Karuthudaiyan through his second wife, that the father of the petitioner was served as Junior Engineer (Agricultural Engineering) in the office of the Assistant Executive Engineer (Agricultural Engineering), Western Ghats Development Project, that he died on 23.10.1994 while in service leaving behind him his two wives and seven children through those two wives. The petitioner has made a representation on 27.3.1995 seeking employment on compassionate ground. His application was entertained, since he has filed 'no objection letters' from all the heirs of his deceased father. He was appointed as Junior Engineer in the year 1998 and there from he has been serving. While the matter stood thus, suddenly an order came to be passed by the second respondent cancelling his appointment stating that the petitioner was the son of the deceased through his second wife and thus he was not entitled to have the appointment on compassionate ground, which is the subject matter of challenge before this Court.

5. In support of his case, learned counsel for the petitioner would submit that it is true that he is the son through second wife, that his father who was in service as Junior Engineer died in the year 1994, that the petitioner has made representation for giving appointment on compassionate ground in the year 1995 along with 'no objection letters' from all the members of the family and he was appointed in the year 1998 and after the period of eight years, suddenly by the second respondent, his appointment was cancelled. Learned counsel for the petitioner would further add that the G.O. relied on for cancellation of the appointment came into existence only in the year 2002, but no retrospective effect was given in the said G.O. and apart from that even without giving an opportunity of being heard, the impugned order has been passed. Under such circumstances, the order of the second respondent has got to be quashed and he should be allowed to continue in service.

6. Contrary to the above, learned counsel for the State would submit that in the instant case, it is an admitted fact that the petitioner is the son of the deceased employee through his second wife and in the G.O.MS.No.34 Labour and Employment/Q1 Department dated 16\4/2002, it is made clear that the children born out of the void marriages are entitled for the benefit in respect of the property of the deceased Government servant i.e. Family Pension and Death-cum-Retirement Gratuity and that compassionate appointment cannot be equated to the status of the property of the deceased . Under such circumstances, while it is an admitted fact that he is the son through the second wife, he is not entitled to have the appointment, but he got appointment. Hence, the cancellation of appointment made by the second respondent was perfectly correct and it has got to be dismissed.

7. The Court paid its anxious consideration on the submissions made. The Court is of the considered opinion that without any hesitation whatsoever, the order passed by the second respondent cancelling the appointment of the petitioner has got to be quashed for more reasons than one. It is not in controversy that the father of the petitioner was Junior Engineer who died while he was in service in the year 1994. The

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petitioner has applied for appointment on compassionate ground in the year 1995. It is also not in controversy that when he made a representation for appointment, he has obtained 'no objection Letters" from all the heirs of the deceased father and only after consideration of the same, he was appointed in the year 1998. He continued to be in service for a period of eight years. The impugned order came to be passed on 21.3.2007. While the order came to be passed cancelling the appointment which was given eight years back, the principles of natural justice would require that he should be given an opportunity, but it was not afforded. Thus, it is a glaring case of offending the principles of natural justice . The State has relied upon G.O.Ms.No.34, Labour Q1 employment Department dated 16.4.2002. In the said G.O., no retrospective effect was given and thus once retrospective effect was not given, no question of shelter under the G.O. for cancellation for appointment which was made in the year 1998 would arise and on that ground alone, the cancellation has got to be set aside.

8. Taking into consideration the cumulative facts and circumstances of the case and the reasons narrated above, the Court is of the considered opinion that the order of the second respondent has got to be quashed and accordingly the writ petition is allowed. No costs. Consequently, WP.MP.No.1 an 2 of 2007 are closed.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

VJY
To
1.The Secretary to Government,
Government of Tamil Nadu,
Agriculture Department,
Fort St.George, Chennai 600 009.

2. The Chief Engineer(Incharge)
Agricultural Engineering,
Nandanam, Chennai 600 035.

3. The Executive Engineer,
(Agricultural Engineering) Villupuram.

+ 2 cc to Mr.M.Ravi Advocate SR.NO.54539
+ 1 cc to Govt.pleader SR.NO.54364

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